A University of Tennessee

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EPA Regulations Require Retainage Interest Change

by Edward Archer

The Environmental Protection Agency (EPA) requires that **all** bid documents contain a section stating that interest will be paid on retainage. This ruling applies to all grant recipients for EPA-funded construction projects. EPA is disallowing reimbursement for interest paid to the contractor on retainage **unless** it is specifically detailed in the bid documents prior to bid opening.

The City of Milan used the following statement in the general conditions of the bid documents:

> **Escrow Account For Contractor Retainage**
>
> The establishment of escrow accounts for CONTRACTORS' funds held as retainage by the OWNER is allowed by law in the state of Tennessee [*Tennessee Code Annotated (TCA) 66-11-144)*]. If so requested by the CONTRACTOR, OWNER will establish such an account, with all earned interest to be paid to the CONTRACTOR at the time the final payment is made.

Cities with signed contracts that have not made provisions concerning interest for retainage should contact the EPA for a ruling prior to the final audit.

For projects already under construction, each situation will be handled as a separate case. Several variables will be taken into consideration, such as the date of the signed contract and the dollar amount of the contract, since the state law (*TCA* 66-11-144) becomes mandatory if the contract amount is over $500,000.

The City of Jackson bid a project with specifications that did not mention interest for retainage. The contract was over $500,000 and was signed after *TCA* 66-11-144 become state law. This law requires the municipality to establish an escrow account into which the retainage is deposited if the amount is over $500,000. The city, by state law, must pay interest on retainage upon receiving a request from the contractor. EPA will allow interest to be earned on retainage, but requires interest earned from grant money to be paid to EPA.

For Further Information

For additional information on EPA regulations on retainage interest, contact your local MTAS municipal consultant in Knoxville at (615) 974-0411; Nashville at (615) 256-8141; or Jackson at (901) 423-3710.

The Municipal Technical Advisory Service (MTAS) is a statewide agency of The University of Tennessee's Institute for Public Service. MTAS operates in cooperation with the Tennessee Municipal League in providing technical assistance services to officials of Tennessee's incorporated municipalities. Assistance is offered in areas such as accounting, administration, finance, public works, communications, ordinance codification, and waste-water management.

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